HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.15953 of 2004

Date:13-07-2007.

Between :

Bharat Sanchar Nigam Limited, Hyderabad,
rep. by its Chief General Manager (Telecom).

.....Petitioner

And

State Bank of India, Bank Street, Hyderabad,
Rep. by its Manager & others.

.....Respondents.

HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.15953 of 2004

ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

Respondent No.4 issued show cause notices dated 05.08.2003 followed by communications dated 06.09.2003, 09.10.2003, 22.10.2003, 05.11.2003, 11.11.2003, 29.11.2003 and 01.12.2003 with respect to a demand of Rs.44,29,88,720/- in terms of Section 5-E of the Andhra Pradesh General Sales Tax Act, 1957 (for short 'the Act'). The Department was of the view that sales tax was payable by the petitioner on telephone rentals under Section 5-E of the Act. The matter was pending before the Supreme Court in Civil Appeal Nos.6323, 6324 and 6325 of 1999. These Civil Appeals had been filed by respondent Nos.2 to 4. A writ petition was also filed by the petitioner, being W.P.No.183 of 2003, before the Supreme Court. This High Court, in writ petition Nos.25864 of 1997 and batch, on 18.12.1998, held that telephone rentals were not exigible to tax under

Section 5-E of the Act. The High Court held that by installing a telephone, there was no transfer of goods from telephone Department to the consumer for any consideration and telephone rentals could not, therefore, be subjected to sales tax. The Sales Tax Appellate Tribunal disposed of certain appeals which were pending before it, on 27.04.2000 for the assessment years 1995-96 and 1996-97 in view of the judgment of the High Court, dated 18.12.1998. Therefore, according to the petitioner, there was no scope for any assessments being made on this count after 18.12.1998. Against the judgment of the High Court, respondent Nos.2 to 4 filed Special Leave Petition and on grant of leave, these appeals were registered as Civil Appeal Nos.6323, 6324 and 6325 of 1999. There was no stay granted by the Supreme Court, of the judgment of the High Court dated 18.12.1998. Similar questions were raised in the case of **State of U.P. v. Union of India**[1], and Supreme Court was dealing with the question of leviability of sales tax and telephone rentals under the U.P. Trade Act, 1948. This case came up before the Supreme Court for hearing on 04.02.2003 as an individual case. The Supreme Court over-ruled the judgment of this High Court, dated 18.12.1998 while deciding the case pertaining to the State of Uttar Pradesh (1 supra). The Civil Appeals filed against the High Court

judgment being Civil Appeal Nos.6323, 6324 and 6325 of 1999 remained pending. Since the matter was decided by the Supreme Court in the judgment referred to above (1 supra), it appears that the Department proceeded with recovery of tax dues, but the writ petition filed by the petitioners before the Supreme Court was pending and it came up for hearing on 21st of April 2003. According to the petitioner, the Supreme Court, on 25.09.2003, directed that any coercive action for recovery of claims with regard to local sales tax shall be stayed except in regard to the completed assessments, subject to the statutory remedies. So, even according to the Supreme Court order, no recovery could be made except in those cases where the assessment had been completed by 25.09.2003. The assessments completed by this date were also made subject to the statutory remedies available to the petitioner. Inspite of the directions of the Supreme Court, respondent Nos.2 to 4, vide letter dated 05.11.2003, asserted that the State of Andhra Pradesh was outside the ambit of stay of coercive action. The respondents, on 02.12.2003, demanded tax of Rs.44,29,88,720/- as assessed tax for 2002-2003, and according to the Department, the assessment had been completed on 06.09.2003. Accordingly, the Revenue addressed a letter to respondent No.1 on 02.12.2003 to transfer all the amounts of the petitioner lying with him.

The 1st respondent was requested by the petitioner on 1st of December 2003, to withhold action of the transfer of any amount with reference to the incorrect stand of respondent No.4, as further directions were awaited from the Supreme Court. Respondent No.1, vide letter dated 01.12.2003 addressed to the petitioner, intimated to get the order dated 29.11.2003 withdrawn, failing which, he would be constrained to transfer the amounts. The respondent No.1, on 02.12.2003, without waiting for any further communication from the petitioner, decided to transfer the amount with respect to the demand of Rs.44,29,88,720/-. The respondent No.1 was informed by the petitioner on 03.12.2003 that notice dated 29.11.2003 was misconceived. The matter was thereupon brought to the notice of the Supreme Court and the Supreme Court, on 16.12.2003, in I.A.No.10-11/2003 in W.P.No.183 of 2003, granted stay of further action on the letters dated 29.11.2003 and 01.12.2003. In pursuance of the order of the Supreme Court, the petitioners requested the Revenue to remit back the amount within seven days, but they did not respond.

The matter now stands substantially concluded by the judgment of Supreme Court in **Bharat Sanchar Nigam Ltd. v. Union of India**[2]. The only objection taken by the learned Government Pleader is that when

the earlier judgment of Supreme Court in the case of **State of U.P.** (1 supra) came, assessment was made and recoveries were made in terms of the assessment. That assessment became final as it was not challenged. This argument cannot be accepted at all, because the petitioners were already before the Supreme Court and after the judgment in **State of U.P.** case (1 supra), they had filed a review petition and also a writ petition under Article 32 of the Constitution of India. Therefore, the matter was pending before the Supreme Court and as such, there was no requirement for the petitioners to challenge the order of assessment made by the assessing authority. The learned Government Pleader submits that in terms of the latest judgment of the Supreme Court in the case of **Bharat Sanchar Nigam Ltd.** (2 supra), the assessing authority has to reconsider the matter in accordance with the directions given by the Supreme Court and the assessing authority would reconsider the matter and pass appropriate order.

In this view of the matter, we dispose of the writ petition and direct the assessing officer to consider the matter again and pass appropriate orders in accordance with the directions of the Supreme Court within a period of two weeks.

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BILAL NAZKI, J

13th July 2007

NOOTY RAMAMOHANA
RAO, J

N.B:
Furnish C.C. in three days.

(b/o)
ajr

[1] 2003 (1) STC 1
[2] 145 STC 91